

109TH CONGRESS
1ST SESSION

S. 842

To amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 19, 2005

Mr. KENNEDY (for himself, Mr. SPECTER, Mr. REID, Mr. DURBIN, Mr. SCHUMER, Mr. DODD, Mr. BINGAMAN, Mr. HARKIN, Ms. MIKULSKI, Mrs. MURRAY, Mrs. CLINTON, Mr. BYRD, Mr. INOUE, Mr. BIDEN, Mr. LEAHY, Mr. SARBANES, Mr. LEVIN, Mr. KERRY, Mr. ROCKEFELLER, Mr. LIEBERMAN, Mr. AKAKA, Mr. DORGAN, Mrs. BOXER, Mr. FEINGOLD, Mr. WYDEN, Ms. LANDRIEU, Mr. BAYH, Mr. CARPER, Ms. STABENOW, Ms. CANTWELL, Mr. CORZINE, Mr. DAYTON, Mr. LAUTENBERG, Mr. OBAMA, Mr. SALAZAR, and Mr. REED) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Employee Free Choice
3 Act”.

4 **SEC. 2. STREAMLINING UNION CERTIFICATION.**

5 (a) IN GENERAL.—Section 9(c) of the National
6 Labor Relations Act (29 U.S.C. 159(c)) is amended by
7 adding at the end the following:

8 “(6) Notwithstanding any other provision of this sec-
9 tion, whenever a petition shall have been filed by an em-
10 ployee or group of employees or any individual or labor
11 organization acting in their behalf alleging that a majority
12 of employees in a unit appropriate for the purposes of col-
13 lective bargaining wish to be represented by an individual
14 or labor organization for such purposes, the Board shall
15 investigate the petition. If the Board finds that a majority
16 of the employees in a unit appropriate for bargaining has
17 signed authorizations designating the individual or labor
18 organization specified in the petition as their bargaining
19 representative and that no other individual or labor orga-
20 nization is currently certified or recognized as the exclu-
21 sive representative of any of the employees in the unit,
22 the Board shall not direct an election but shall certify the
23 individual or labor organization as the representative de-
24 scribed in subsection (a).

25 “(7) The Board shall develop guidelines and proce-
26 dures for the designation by employees of a bargaining

1 representative in the manner described in paragraph (6).

2 Such guidelines and procedures shall include—

3 “(A) model collective bargaining authorization
4 language that may be used for purposes of making
5 the designations described in paragraph (6); and

6 “(B) procedures to be used by the Board to es-
7 tablish the authenticity of signed authorizations des-
8 ignating bargaining representatives.”.

9 (b) CONFORMING AMENDMENTS.—

10 (1) NATIONAL LABOR RELATIONS BOARD.—Sec-
11 tion 3(b) of the National Labor Relations Act (29
12 U.S.C. 153(b)) is amended, in the second sentence—

13 (A) by striking “and to” and inserting
14 “to”; and

15 (B) by striking “and certify the results
16 thereof,” and inserting “, and to issue certifi-
17 cations as provided for in that section,”.

18 (2) UNFAIR LABOR PRACTICES.—Section 8(b)
19 of the National Labor Relations Act (29 U.S.C.
20 158(b)) is amended—

21 (A) in paragraph (7)(B) by striking “, or”
22 and inserting “or a petition has been filed
23 under section 9(c)(6), or”; and

24 (B) in paragraph (7)(C) by striking “when
25 such a petition has been filed” and inserting

1 “when such a petition other than a petition
2 under section 9(c)(6) has been filed”.

3 **SEC. 3. FACILITATING INITIAL COLLECTIVE BARGAINING**
4 **AGREEMENTS.**

5 Section 8 of the National Labor Relations Act (29
6 U.S.C. 158) is amended by adding at the end the fol-
7 lowing:

8 “(h) Whenever collective bargaining is for the pur-
9 pose of establishing an initial agreement following certifi-
10 cation or recognition, the provisions of subsection (d) shall
11 be modified as follows:

12 “(1) Not later than 10 days after receiving a
13 written request for collective bargaining from an in-
14 dividual or labor organization that has been newly
15 organized or certified as a representative as defined
16 in section 9(a), or within such further period as the
17 parties agree upon, the parties shall meet and com-
18 mence to bargain collectively and shall make every
19 reasonable effort to conclude and sign a collective
20 bargaining agreement.

21 “(2) If after the expiration of the 90-day period
22 beginning on the date on which bargaining is com-
23 menced, or such additional period as the parties may
24 agree upon, the parties have failed to reach an
25 agreement, either party may notify the Federal Me-

1 diation and Conciliation Service of the existence of
 2 a dispute and request mediation. Whenever such a
 3 request is received, it shall be the duty of the Service
 4 promptly to put itself in communication with the
 5 parties and to use its best efforts, by mediation and
 6 conciliation, to bring them to agreement.

7 “(3) If after the expiration of the 30-day period
 8 beginning on the date on which the request for me-
 9 diation is made under paragraph (2), or such addi-
 10 tional period as the parties may agree upon, the
 11 Service is not able to bring the parties to agreement
 12 by conciliation, the Service shall refer the dispute to
 13 an arbitration board established in accordance with
 14 such regulations as may be prescribed by the Serv-
 15 ice. The arbitration panel shall render a decision set-
 16 tling the dispute and such decision shall be binding
 17 upon the parties for a period of 2 years, unless
 18 amended during such period by written consent of
 19 the parties.”.

20 **SEC. 4. STRENGTHENING ENFORCEMENT.**

21 (a) INJUNCTIONS AGAINST UNFAIR LABOR PRAC-
 22 TICES DURING ORGANIZING DRIVES.—

23 (1) IN GENERAL.—Section 10(l) of the National
 24 Labor Relations Act (29 U.S.C. 160(l)) is amend-
 25 ed—

1 (A) in the second sentence, by striking “If,
2 after such” and inserting the following:

3 “(2) If, after such”; and

4 (B) by striking the first sentence and in-
5 serting the following:

6 “(1) Whenever it is charged—

7 “(A) that any employer—

8 “(i) discharged or otherwise discriminated
9 against an employee in violation of subsection
10 (a)(3) of section 8;

11 “(ii) threatened to discharge or to other-
12 wise discriminate against an employee in viola-
13 tion of subsection (a)(1) of section 8; or

14 “(iii) engaged in any other unfair labor
15 practice within the meaning of subsection (a)(1)
16 that significantly interferes with, restrains, or
17 coerces employees in the exercise of the rights
18 guaranteed in section 7;

19 while employees of that employer were seeking rep-
20 resentation by a labor organization or during the pe-
21 riod after a labor organization was recognized as a
22 representative defined in section 9(a) until the first
23 collective bargaining contract is entered into between
24 the employer and the representative; or

1 “(B) that any person has engaged in an unfair
 2 labor practice within the meaning of subparagraph
 3 (A), (B) or (C) of section 8(b)(4), section 8(e), or
 4 section 8(b)(7);
 5 the preliminary investigation of such charge shall be
 6 made forthwith and given priority over all other
 7 cases except cases of like character in the office
 8 where it is filed or to which it is referred.”.

9 (2) CONFORMING AMENDMENT.—Section 10(m)
 10 of the National Labor Relations (29 U.S.C. 160(m))
 11 is amended by inserting “under circumstances not
 12 subject to section 10(l)” after “section 8”.

13 (b) REMEDIES FOR VIOLATIONS.—

14 (1) BACKPAY.—Section 10(c) of the National
 15 Labor Relations Act (29 U.S.C. 160(c)) is amended
 16 by striking “*And provided further,*” and inserting
 17 “*Provided further,* That if the Board finds that an
 18 employer has discriminated against an employee in
 19 violation of subsection (a)(3) of section 8 while em-
 20 ployees of the employer were seeking representation
 21 by a labor organization, or during the period after
 22 a labor organization was recognized as a representa-
 23 tive defined in subsection (a) of section 9 until the
 24 first collective bargaining contract was entered into
 25 between the employer and the representative, the

1 Board in such order shall award the employee back
 2 pay and, in addition, 2 times that amount as liq-
 3 uidated damages: *Provided further,*”.

4 (2) CIVIL PENALTIES.—Section 12 of the Na-
 5 tional Labor Relations Act (29 U.S.C. 162) is
 6 amended—

7 (A) by striking “Any” and inserting “(a)
 8 Any”; and

9 (B) by adding at the end the following:

10 “(b) Any employer who willfully or repeatedly com-
 11 mits any unfair labor practice within the meaning of sub-
 12 sections (a)(1) or (a)(3) of section 8 while employees of
 13 the employer are seeking representation by a labor organi-
 14 zation or during the period after a labor organization has
 15 been recognized as a representative defined in subsection
 16 (a) of section 9 until the first collective bargaining con-
 17 tract is entered into between the employer and the rep-
 18 resentative shall, in addition to any make-whole remedy
 19 ordered, be subject to a civil penalty of not to exceed
 20 \$20,000 for each violation. In determining the amount of
 21 any penalty under this section, the Board shall consider
 22 the gravity of the unfair labor practice and the impact
 23 of the unfair labor practice on the charging party, on other

- 1 persons seeking to exercise rights guaranteed by this Act,
- 2 or on the public interest.”.

